

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

LINDSAY TRANSMISSION, LLC, individually  
and on behalf of all others similarly-situated,

Plaintiff,

v.

OFFICE DEPOT, INC.,

Defendant.

Case No. 4:12-cv-00221-CEJ

**PLAINTIFF’S MEMORANDUM SUPPORTING ITS MOTION FOR LEAVE  
TO AMEND COMPLAINT**

COMES NOW Plaintiff by and through the undersigned counsel and pursuant to Federal Rules of Civil Procedure 15a(2), and local Rule 7-4.01(A), and moves the Court to enter its order granting leave to amend its complaint.

**INTRODUCTION AND PROCEDURAL BACKGROUND**

The Defendant removed this case to Federal Court on February 8, 2012. Plaintiff has not previously sought leave to amend its complaint in Federal Court. Under the Class Discovery and Certification Case Management Order of April 27, 2012 (Doc #28) Plaintiff had until May 31, 2012 to amend his pleadings (paragraph 1). On January 24, 2013, the Court issued a Memorandum and Order (Doc #74) holding that the Plaintiff was not entitled to define the class on a nationwide basis. The Court also held that Plaintiff’s proposed class definition “flies directly in the face of a basic tenet of class certification: a court may not inquire into the merits of the case at the class certification stage.” *Id.* The Court also held that “In this case, there is no evidence that Defendant engaged in blast faxing on its own or through a third party or worked off a **nationwide** leads list.” (Emphasis added) *Id.*

It is undisputed that Defendant did use a list the Warrensburg Chamber of Commerce list to send advertising faxes from the Warrensburg Office Depot location. Plaintiff moves the Court to allow it to amend its petition to propose a non-nationwide class that does not inquire into the merits of the case and is restricted to the Warrensburg Office Depot location faxing activities. Plaintiff has attached its proposed amended complaint as Exhibit A to its motion.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2013, I submitted the foregoing via this Court's CM/ECF electronic filing service, pursuant to Rule 28A(a), which served notice of the filing on the Attorneys for Defendant, David P. Stoeberl and Tina N. Babel, Carmody MacDonald, P.C., 120 S. Central Ave, Ste 1800, St. Louis, MO 63105, P: 314-854-8600, F: 314-854-8660. Email: dps@carmodymacdonald.com and tnb@carmodymacdonald.com and Michael A. Swartzendruber and Casey Moore, Fulbright & Jaworski, LLP, 2200 Ross Ave, Ste 2800, Dallas, TX 75201-2784, P: 214-855-8000, F: 214-855-8200, Email: mswartzendruber@fulbright.com and cmoore@fulbright.com and a courtesy copy was also served by email.

/s/Max G. Margulis